

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY DARRELL GODFREY,

Defendant-Appellant.

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UNPUBLISHED

October 24, 2006

No. 264602

Wayne Circuit Court

LC No. 05-003565-01

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and two counts of unlawfully driving away an automobile (UDAA), MCL 750.413. He was sentenced as a fourth-offense habitual offender, MCL 769.12, to 35 to 60 years in prison for the home invasion conviction and 6 to 15 years in prison for the UDAA convictions. He appeals as of right, challenging his sentence for home invasion. We affirm.

First-degree home invasion is a Class B felony subject to the statutory sentencing guidelines. MCL 777.16f. The guidelines as scored placed defendant in the F-IV category, for which the minimum sentence range is 87 to 145 months. MCL 777.63. As a fourth-offense habitual offender, the minimum sentence range 87 to 290 months. MCL 777.21(3)(c). The trial court departed from this range, citing a number of factors.

A court must impose a minimum sentence within the sentencing guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). The court may depart from the guidelines if it “has a substantial and compelling reason for that departure and states on the record the reasons for departure.” MCL 769.34(3). The court may depart from the guidelines for nondiscriminatory reasons where there are legitimate factors not considered by the guidelines or where factors considered by the guidelines have been given inadequate or disproportionate weight. MCL 769.34(3)(a) and (b); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001).

“[T]he Legislature intended ‘substantial and compelling reasons’ to exist only in exceptional cases.” *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). Only objective factors that are capable of verification may be used to assess whether there are substantial and compelling reasons to deviate from the minimum sentence range under the guidelines. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000). Objective and verifiable factors are

“actions or occurrences that are external to the minds of the judge, defendant, and others involved in making the decision, and must be capable of being confirmed.” *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). A departure is appropriate “if there are substantial and compelling reasons that lead the trial court to believe that a sentence within the guidelines ranges is not proportionate to the seriousness of the defendant’s conduct and to the seriousness of his criminal history,” such that a departure would result in “a more proportionate criminal sentence than is available within the guidelines range.” *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003).

The trial court’s determination regarding the existence of a reason or factor warranting departure is a factual determination that is reviewed on appeal under the clearly erroneous standard. *Id.* at 273. The determination that a particular factor is objective and verifiable is reviewed by this Court as a matter of law. *Id.* The trial court’s determination that objective and verifiable factors present a substantial and compelling reason to depart from the statutory minimum sentence is reviewed for an abuse of discretion, which “occurs when the trial court chooses an outcome falling outside the permissible principled range of outcomes.” *Id.* at 274.

The trial court had a valid basis for departing from the guidelines. It properly found that the guidelines did not give adequate weight to defendant’s lengthy criminal history. Defendant received a total prior record variable score of 135 points, nearly twice the maximum score of 75 points necessary to place defendant in the highest category of prior offenders. This was a valid basis for exceeding the guidelines. *People v Stewart*, 442 Mich 937-938; 505 NW2d 576 (1993). Further, the guidelines did not account for the revolving-door nature of defendant’s contacts with the criminal justice system. As the trial court observed, the only time defendant has refrained from criminal behavior has been when he was incarcerated. Further, while the guidelines account for defendant’s role as a leader in a multiple offender situation, MCL 777.44, they do not take into account that he contributed to the delinquency of a minor. See MCL 750.145. Likewise, the guidelines did not take into account that defendant committed contemporaneous offenses involving theft of the vehicles. Nor do they account for defendant’s perjured testimony, which was relevant to defendant’s prospects for rehabilitation. *People v Houston*, 448 Mich 312, 324; 532 NW2d 508 (1995); *People v Adams*, 430 Mich 679, 693-694; 425 NW2d 437 (1988). In addition, while a home invasion is elevated to first-degree by another person’s lawful presence in the house, MCL 750.110a(2)(b), neither that nor the guidelines accounted for the particular nature of this invasion, which involved entry into the bedroom of the sleeping homeowner and her guest. Given these factors, the trial court did not abuse its discretion in departing upwards from the guidelines.

We affirm.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens